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In Re:  
Theodore J Mees  
and Brooke A Mees,

Debtors,

Case No. 04-34914

Chapter 7 Case

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**MOVANT'S REPLY TO DEBTORS' MEMORANDUM DATED 9-22-04**

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Movant submits the following reply to the various sections of Debtors' responsive Memorandum of Fact and Law Opposing the Motion for Relief from the Stay:

**II. ANALYSIS**

**A. Hometown Federal Credit Union has no Interest in the Property.**

Term 8 of the Credit Card Agreement (Exhibit A) signed by the Debtor refers to a pledge of specific shares which can be done to secure payment of the visa account balance. The concept of credit union shares is a difficult one for persons who have worked only with banks.

A deposit of funds into a credit union results in the purchase of shares in the credit union. The shares are non-certificated in nature. Share recordkeeping for each credit union member is maintained by the credit union. Shares can be issued in fractional amounts. The credit union pays dividends, not interest, to its members based on the shares owned. A minimum number of shares must be owned by the member to remain a member in good standing with the credit union. See Exhibit C, Membership and Account Agreement, Part I, introductory paragraph and Term 1.

Credit union shares are held in share accounts opened by and registered to the member. Movant has various types of share accounts including share savings accounts and share draft accounts. At the time of filing this bankruptcy, Debtors owned credit union shares valued at \$2,364.76.

Just as specific certificates of stock or shares issued by a New York Stock Exchange corporation can be pledged as collateral, so too a credit union member can pledge specific shares to secure a loan owed to the credit union. A specific share pledge by a member results in the shares being segregated in a

share sub-account and kept intact in the possession of the secured credit union lender in accordance with the security agreement between the credit union and its member borrower.

Term 8 of the Credit Card Agreement merely references the method by which such a specific share pledge could be done if desired by the parties. It has nothing to do with the credit union's statutory lien on all shares whether specifically pledged or not.

In error, Movant's papers referred to and included as part of Exhibit C the Minnesota statute on credit union statutory liens. Attached hereto as Exhibits E and F are copies of 12 U.S.C. §1757(11) and 12 C.F.R. §701.39, regarding the applicable statutory lien for federal credit unions.

The Membership and Account Agreement, Term 19, specifically establishes Movant's lien and security interest in the share accounts owned by its members.

B. Alternatively, Home Town Federal Credit Union is Adequately Protected.

There is no equity cushion. The lien and security interest established in Term 19, Membership and Account Agreement, is consensual and applies to any money owed by the member to the credit union whether as a borrower, guarantor, endorser or otherwise.

The lien established applies to the balance owed on the visa account. See Term 3, Credit Card Agreement. The lien applies to the overdrawn balance owed on the Debtor's share draft account after the credit union continued to honor checks presented after a levy had seized all shares in the share draft account. See Terms 14 and 20, Membership and Account Agreement. It applies to all fees charged by the credit union to its members for the accounts and services provided by the credit union. See Term 11, Membership and Account Agreement. It applies to the attorney's fees and costs of enforcement of credit union rights. See Term 31, Membership and Account Agreement.

The total owed by Debtors to Movant is \$2, 050.82. The basis for each of these amounts is set forth in the Exhibits and Verification filed with the Notice of Hearing and Motion papers. The total includes:

\$747.34 visa account balance, see Exhibit A, page 1.

\$758.48 negative balance on overdrawn draft account no. 49290-S50, see Exhibit B, page 1.

\$95.00 nsf fees for 5 checks at \$19.00 each, see Exhibit B, pages 2 and 3. The \$19.00 is set in the Rate & Fee Schedule referred to in Term 11, Membership and Account Agreement. A copy of the Rate & Fee Schedule is attached hereto as Exhibit G.

\$450.00 attorney's fees and costs for filing this motion, see Verification, paragraph 7, as allowed by the Membership and Account Agreement, Term 31.

Movant is presently holding pre-petition shares frozen in the amount of \$2,050.82 for its lien.

C. Amount of Creditor's Claim.

Movant did not cause the overdrawn balance nor the "bounced" checks. On or about August 17, 2004, Movant was served with levy papers pursuant to a judgment in favor of Retailers National Bank/Target Visa and against Theodore J Mees. Under the levy, Movant impounded shares worth \$2,304.76 in Debtors' various share savings and draft accounts as of the date the levy was served. A copy of the levy papers are attached hereto as Exhibit H. Movant assessed a \$30.00 levy fee and kept the \$10.00 minimum share balance in each of the 3 share savings accounts as required for membership.

After August 17, 2004 several checks were presented for payment out of Debtors' share draft account no. 49290- S50. See Exhibit B. Based on Debtors' longstanding membership with the credit union, Movant, in good faith, paid the presented checks although this resulted in a negative balance in Debtors' account. Movant continued to do so until August 26, 2004 when it received the bankruptcy notice. See Exhibit D, diary notes of dates. See Exhibit B, page 3 notation of closing of account.

After this bankruptcy case was filed, the attorneys for the judgment creditor levying on the account provided a release to the credit union. A copy of the release is attached as Exhibit I. The credit union closed the draft account and froze the now released levy funds to cover its losses.

The Supreme Court case of Citizens Bank of Maryland v. Strumpf, 116 S.Ct. 286 (1995) requires the financial institution holding frozen funds to act promptly in filing the motion for stay relief to enforce lien rights or setoff rights in the frozen funds. Movant retained counsel who promptly filed its motion on September 3, 2004.

### **III. CONCLUSION.**

The credit union's lien is established by federal statute and by agreement with its member. The lien is enforceable to the full extent of all money owed to the credit union regardless of whether member owes the money as a borrower, guarantor, endorser, or otherwise. That total is \$2,050.82. Movant has not assessed any interest or finance charges on that amount.

There remains \$313.94 unfrozen in Debtors' share savings accounts which is available for Debtors to withdraw, including the minimum share balances of \$10.00 each in share accounts nos. 49290-S1, 78814-S1, and 78816-S1 and the \$30.00 levy fee which was replaced when the levy was released by the judgment creditor's attorney.

In summary, Movant asks the court to grant its motion so that it can enforce its lien rights and set off the frozen shares against the debt owed to it.

Dated: September 22, 2004

**STEWART, ZLIMEN & JUNGERS, LTD.**

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

Citation  
12 USCA S 1757  
12 U.S.C.A. § 1757  
▷

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Effective: September 30, 1996

UNITED STATES CODE ANNOTATED  
TITLE 12. BANKS AND BANKING  
CHAPTER 14--FEDERAL CREDIT UNIONS  
SUBCHAPTER I--GENERAL PROVISIONS  
§ 1757. Powers

A Federal credit union shall have succession in its corporate name during its existence and shall have power--

- (1) to make contracts;
- (2) to sue and be sued;
- (3) to adopt and use a common seal and alter the same at pleasure;
- (4) to purchase, hold, and dispose of property necessary or incidental to its operations;
- (5) to make loans, the maturities of which shall not exceed twelve years except as otherwise provided herein, and extend lines of credit to its members, to other credit unions, and to credit union organizations and to participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:
  - (A) Loans to members shall be made in conformity with criteria established by the board of directors: *Provided*, That--
    - (i) a residential real estate loan on a one-to-four-family dwelling, including an individual cooperative unit, that is or will be the principal residence of a credit union member, and which is secured by a first lien upon such dwelling, may have a maturity not exceeding thirty years or such other limits as shall be set by the National Credit Union Administration Board (except that a loan on an individual cooperative unit shall be adequately secured as defined by the Board), subject to the rules and regulations of the Board;
    - (ii) a loan to finance the purchase of a mobile home, which shall be secured by a first lien on such mobile home, to be used by the credit union member as his residence, a loan for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member, or a second mortgage loan secured by a residential dwelling which is the residence of a credit union member, shall have a maturity not to exceed 15 years or any longer term which the Board may allow;
    - (iii) a loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government, or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance, guarantee, or commitment is provided;
    - (iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan which exceeds \$20,000 plus pledged shares, be approved by the board of directors;
    - (v) loans to other members for which directors or members of the supervisory or credit committee act as guarantor or endorser be approved by the board of directors when such loans standing alone or when added to any outstanding loan or loans of the guarantor or endorser exceeds \$20,000;
    - (vi) the rate of interest may not exceed 15 per centum per annum on the unpaid balance inclusive of all finance

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EXHIBIT E

charges, except that the Board may establish--

(I) after consultation with the appropriate committees of the Congress, the Department of Treasury, and the Federal financial institution regulatory agencies, an interest rate ceiling exceeding such 15 per centum per annum rate, for periods not to exceed 18 months, if it determines that money market interest rates have risen over the preceding six-month period and that prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth; and

(II) a higher interest rate ceiling for Agent members for the Central Liquidity Facility in carrying out the provisions of subchapter III of this chapter for such periods as the Board may authorize;

(vii) the taking, receiving, reserving, or charging of a rate of interest greater than is allowed by this paragraph, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back from the credit union taking or receiving the same, in an action in the nature of an action of debt, the entire amount of interest paid; but such action must be commenced within two years from the time the usurious collection was made;

(viii) a borrower may repay his loan, prior to maturity in whole or in part on any business day without penalty, except that on a first or second mortgage loan a Federal credit union may require that any partial prepayments (I) be made on the date monthly installments are due, and (II) be in the amount of that part of one or more monthly installments which would be applicable to principal;

(ix) loans shall be paid or amortized in accordance with rules and regulations prescribed by the Board after taking into account the needs or conditions of the borrowers, the amounts and duration of the loans, the interests of the members and the credit unions, and such other factors as the Board deems relevant;

(x) loans must be approved by the credit committee or a loan officer, but no loan may be made to any member if, upon the making of that loan, the member would be indebted to the Federal credit union upon loans made to him in an aggregate amount which would exceed 10 per centum of the credit union's unimpaired capital and surplus.

(B) A self-replenishing line of credit to a borrower may be established to a stated maximum amount on certain terms and conditions which may be different from the terms and conditions established for another borrower.

(C) Loans to other credit unions shall be approved by the board of directors.

(D) Loans to credit union organizations shall be approved by the board of directors and shall not exceed 1 per centum of the paid-in and unimpaired capital and surplus of the credit union. A credit union organization means any organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve.

(E) Participation loans with other credit unions, credit union organizations, or financial organizations shall be in accordance with written policies of the board of directors: *Provided*, That a credit union which originates a loan for which participation arrangements are made in accordance with this subsection shall retain an interest of at least 10 per centum of the face amount of the loan.

(6) to receive from its members, from other credit unions, from an officer, employee, or agent of those nonmember units of Federal, Indian tribal, State, or local governments and political subdivisions thereof enumerated in section 1787 of this title and in the manner so prescribed, from the Central Liquidity Facility, and from nonmembers in the case of credit unions serving predominately low-income members (as defined by the Board) payments, representing equity, on--

(A) shares which may be issued at varying dividend rates;

(B) share certificates which may be issued at varying dividend rates and maturities; and

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(C) share draft accounts authorized under section 1785(f) of this title;

subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the Board.

(7) to invest its funds (A) in loans exclusively to members; (B) in obligations of the United States of America, or securities fully guaranteed as to principal and interest thereby; (C) in accordance with rules and regulations prescribed by the Board, in loans to other credit unions in the total amount not exceeding 25 per centum of its paid-in and unimpaired capital and surplus; (D) in shares or accounts of savings and loan associations or mutual savings banks, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation; (E) in obligations issued by banks for cooperatives, Federal land banks, Federal intermediate credit banks, Federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in section 9101(3) of Title 31 as a wholly owned Government corporation; or in obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association, or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or 1455 of this title; or in obligations or other instruments or securities of the Student Loan Marketing Association; or in obligations, participations, securities, or other instruments of, or issued by, or fully guaranteed as to principal and interest by any other agency of the United States and a Federal credit union may issue and sell securities which are guaranteed pursuant to section 1721(g) of this title; (F) in participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections therefrom, which obligations have been subjected by one or more Government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States (or the head thereof) has been named to act as trustee; (G) in shares or deposits of any central credit union in which such investments are specifically authorized by the board of directors of the Federal credit union making the investment; (H) in shares, share certificates, or share deposits of federally insured credit unions; (I) in the shares, stocks, or obligations of any other organization, providing services which are associated with the routine operations of credit unions, up to 1 per centum of the total paid in and unimpaired capital and surplus of the credit union with the approval of the Board: *Provided, however*, That such authority does not include the power to acquire control directly or indirectly, of another financial institution, nor invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility or any other similar organization, corporation, or association, except as otherwise expressly provided by this chapter; (J) in the capital stock of the National Credit Union Central Liquidity Facility; (K) investments in obligations of, or issued by, any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision), except that no credit union may invest more than 10 per centum of its unimpaired capital and surplus in the obligations of any one issuer (exclusive of general obligations of the issuer). [FN1]

(8) to make deposits in national banks and in State banks, trust companies, and mutual savings banks operating in accordance with the laws of the State in which the Federal credit union does business, or in banks or institutions the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, and for Federal credit unions or credit unions authorized by the Department of Defense operating suboffices on American military installations in foreign countries or trust territories of the United States to maintain demand deposit accounts in banks located in those countries or trust territories, subject to such regulations as may be issued by the Board and provided such banks are correspondents of banks described in this paragraph;

(9) to borrow, in accordance with such rules and regulations as may be prescribed by the Board, from any source, in an aggregate amount not exceeding, except as authorized by the Board in carrying out the provisions of subchapter III of this chapter, 50 per centum of its paid-in and unimpaired capital and surplus: *Provided*, That any Federal credit union may discount with or sell to any Federal intermediate credit bank any eligible obligations up to the amount of its paid-in and unimpaired capital;

(10) to levy late charges, in accordance with the bylaws, for failure of members to meet promptly their obligations to the Federal credit union;

(11) to impress and enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him;

(12) in accordance with rules and regulations prescribed by the Board, to sell to members negotiable checks (including travelers checks), money orders, and other similar money transfer instruments, and to cash checks and money orders for members, for a fee;

(13) in accordance with rules and regulations prescribed by the Board, to purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations (as defined by the Board) of its members and to purchase from any liquidating credit union notes made by individual members of the liquidating credit union at such prices as may be agreed upon by the board of directors of the liquidating credit union and the board of directors of the purchasing credit union, but no purchase may be made under authority of this paragraph if, upon the making of that purchase, the aggregate of the unpaid balances of notes purchased under authority of this paragraph would exceed 5 per centum of the unimpaired capital and surplus of the credit union;

(14) to sell all or a part of its assets to another credit union, to purchase all or part of the assets of another credit union and to assume the liabilities of the selling credit union and those of its members subject to regulations of the Board;

(15) to invest in securities that--

(A) are offered and sold pursuant to section 77d(5) of Title 15;

(B) are mortgage related securities (as that term is defined in section 78c(a)(41) of Title 15), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both; or

(C) are small business related securities (as defined in section 78c(a)(53) of Title 15), subject to such regulations as the Board may prescribe, including regulations prescribing the minimum size of the issue (at the time of the initial distribution), the minimum aggregate sales price, or both;

(16) subject to such regulations as the Board may prescribe, to provide technical assistance to credit unions in Poland and Hungary; and

(17) to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

#### CREDIT(S)

(June 26, 1934, c. 750, Title I, § 107, formerly § 7, 48 Stat. 1218; Dec. 6, 1937, c. 3, § 2, 51 Stat. 4; July 31, 1946, c. 711, § 1, 60 Stat. 744; 1947 Reorg. Plan No. 1, § 401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, c. 711, §§ 1, 2, 62 Stat. 1091; Oct. 25, 1949, c. 713, § 1, 63 Stat. 890; May 13, 1952, c. 264, 66 Stat. 70; renumbered § 8, and amended Sept. 22, 1959, Pub. L. 86-354, § 1, 73 Stat. 630; July 2, 1964, Pub. L. 88-353, § 1, 78 Stat. 269; May 24, 1966, Pub. L. 89-429, § 7, 80 Stat. 167; July 3, 1967, Pub. L. 90-44, §§ 2, 3, 81 Stat. 110, 111; July 5, 1968, Pub. L. 90-375, § 1(1)-(3), 82 Stat. 284; Aug. 1, 1968, Pub. L. 90-448, Title VIII, § 807(n), 82 Stat. 545; Mar. 10, 1970, Pub. L. 91-206, § 2(1), 84 Stat. 49; renumbered Title I, § 107, and amended Oct. 19, 1970, Pub. L. 91-468, §§ 1(2), 10, 84 Stat. 994, 1017; June 23, 1972, Pub. L. 92-318, Title I, § 133(c)(4), 86 Stat. 270; Aug. 22, 1974, Pub. L. 93-383, Title VII, § 721, Title VIII, § 805(c)(5), 88 Stat. 719, 727; Oct. 28, 1974, Pub. L. 93-495, Title I, § 101(d), 88 Stat. 1502; Dec. 31, 1974, Pub. L. 93-569, § 6, 88 Stat. 1866; Apr. 19, 1977, Pub. L. 95-22, Title



C

CODE OF FEDERAL REGULATIONS  
TITLE 12--BANKS AND BANKING  
CHAPTER VII--NATIONAL CREDIT UNION  
ADMINISTRATION  
SUBCHAPTER A--REGULATIONS AFFECTING  
CREDIT UNIONS  
PART 701--ORGANIZATION AND OPERATION  
OF FEDERAL CREDIT UNIONS  
Current through September 17, 2004; 69 FR 56131

§ 701.39 Statutory lien.

(a) Definitions. Within this section, each of the following terms has the meaning prescribed below:

(1) Except as otherwise provided by law or except as otherwise provided by federal law is a qualifying phrase referring to a federal and/or state law, as the case may be, which supersedes a requirement of this section. It is the responsibility of the credit union to ascertain whether such statutory or case law exists and is applicable;

(2) Impress means to attach to a member's account and is the act which makes the lien enforceable against that account;

(3) Member means any member who is primarily, secondarily or otherwise responsible for an outstanding financial obligation to the credit union, including without limitation an obligor, maker, co-maker, guarantor, co-signer, endorser, surety or accommodation party;

(4) Notice means written notice to a member disclosing, in plain language, that the credit union has the right to impress and enforce a statutory lien against the member's shares and dividends in the event of failure to satisfy a financial obligation, and may enforce the right without further notice to the member. Such notice must be given at the time, or at any time before, the member incurs the financial obligation;

(5) Statutory lien means the right granted by section 107(11) of the Federal Credit Union Act, 12 U.S.C. 1757(11), to a federal credit union to establish a right in or claim to a member's shares and dividends equal to the amount of that member's outstanding financial obligation to the credit union, as that amount varies from time to time.

(b) Superior claim. Except as otherwise provided by law, a statutory lien gives the federal credit union priority over other creditors when claims are asserted against a member's account(s).

(c) Impressing a statutory lien. Except as otherwise provided by federal law, a credit union can impress a statutory lien on a member's account(s)--

(1) Account records. By giving notice thereof in the member's account agreement(s) or other account opening documentation; or

(2) Loan documents. In the case of a loan, by giving notice thereof in a loan document signed or otherwise acknowledged by the member(s); or

(3) By-Law or policy. Through a duly adopted credit union by-law or policy of the board of directors, of which the member is given notice.

(d) Enforcing a statutory lien--

(1) Application of funds. Except as otherwise provided by federal law, a federal credit union may enforce its statutory lien against a member's account(s) by debiting funds in the account and applying them to the extent of any of the member's outstanding financial obligations to the credit union.

(2) Default required. A federal credit union may enforce its statutory lien against a member's account(s) only when the member fails to satisfy an outstanding financial obligation due and payable to the credit union.

(3) Neither judgment nor set-off required. A federal credit union need not obtain a court judgment on the member's debt, nor exercise the equitable right of set-off, prior to enforcing its statutory lien against the member's account.

[64 FR 56956, Oct. 22, 1999]

<General Materials (GM) - References, Annotations,  
or Tables>

12 C. F. R. § 701.39

12 CFR § 701.39

END OF DOCUMENT

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EXHIBIT F

# RATE & FEE SCHEDULE

## SAVINGS AND CHECKING ACCOUNTS



**OWATONNA**  
**LOCATIONS:**  
 2400 W. Bridge St.  
 1620 Cedar Ave.  
 Owatonna, MN 55060  
 1-888-451-3798

**FARIBAULT**  
**LOCATION:**  
 122 N.W. 9th Avenue  
 Faribault, MN 55021  
 1-888-959-9428

**ATM Card/VISA Debit Card**  
 • Ten (10) PIN transactions\* per month are allowed free of charge. Each additional transaction costs \$1.00.  
 • Maximum daily ATM withdrawal limit of \$200  
 • Maximum of three (3) ATM transactions per day  
 • Card Replacement fee: \$10.00 per card  
 \*To minimize PIN transactions for point-of-sale purchases, always select the CREDIT option when given the choice.

**BillPay @ Home Fees**  
 • NO Monthly Fee  
 • Bill Payment Check Copy: \$6.00  
 • Undeliverable Bill Payment: \$15.00

**Safe Deposit Box Fees**  
 (Bridge St. Location)  
 Annual Rental Size: Fee/Master's Reduced  
 • 3 x 5: \$18.00/\$5.00  
 • 3 x 10: \$25.00/\$20.00  
 • 5 x 10: \$30.00/N/A  
 • Drilling of Box fee: \$75.00  
 • Single Key Replacement fee: \$20.00

## FEE SCHEDULE

**Savings Fees**  
 • Club Account Early Withdrawal fee: \$10.00 per withdrawal  
 • Share Savings Closing Fee: \$10.00 per occasion  
 • Share Savings Re-Opening fee: \$15.00 per occasion  
 • Share Savings Re-Opening fee: \$15.00 per occasion  
 • Share Savings Overdrawn  
 • Account fee: \$19.00 per item  
 • Money Market Withdrawal fee: \$10.00 per withdrawal  
 • Minimum withdrawal of \$300.00

**Checking Account Fees**  
 • NSF fee: \$19.00 per item, maximum \$57.00 per day.  
 • Returned item fee: \$19.00 per item.  
 • Stop Payment fee: \$15.00 per request.  
 • Check Printing fee: Prices may vary depending upon style  
 • Interest Checking Account Service fee: \$4.00 per month if the minimum balance is not maintained  
 • Business Account fees: See Business Brochure

**Other Service Fees**  
 (Applicable to all accounts)  
 • Account Reconciliation fee: \$15.00 per hour.  
 • Account Research fee: \$15.00 per hour.  
 • Statement Copy fee: \$3.00 per copy.  
 • Returned mail fee: \$3.00 per item.  
 • Deposited Item Return fee: \$19.00 per item.  
 • Wire Transfer fee: \$15.00 per transfer  
 • International Wire Transfer fee: \$35.00 per transfer  
 • Western Union fee: \$35.00  
 • Up to \$500: \$35.00 plus 2% of Principal  
 • Certified Check fee: \$5.00 per check.  
 • Money Order fee: \$1.00 per money order.  
 • Travelers Cheques: FREE  
 • Check/Receipt Copy fee: \$3.00 each  
 • Check/Receipt Copy fee: FREE through CU@Home  
 • Dormant account fee: \$25.00  
 • Duplicate Mortgage and Judgment Satisfaction fee: \$25.00  
 • Duplicate Lien Holder Release fee: \$10.00  
 • Mortgage Subordination fee: \$25.00  
 • Levy Processing fee: \$30.00  
 • Skip Payment fee: \$15.00  
 • Collection Fee: \$15.00  
 • 15 Day Negative Share Account Balance Fee: \$15.00

The rates and fees appearing in this Schedule are accurate and effective for accounts as of the Effective Date indicated on this Rate and Fee Schedule. If you have any questions or require current rate and fee information on your accounts, please call the Credit Union.

EXHIBIT  
G

**The Credit Union may offer other rates for these accounts from time to time.**

Effective date: July 1, 2004

**TRUTH-IN-SAVINGS DISCLOSURES**

**Dividends Compounding and Crediting.** The compounding and crediting of dividends and dividend payments applicable to each account are set forth in the Rate Schedule. The Dividend Period is a period of time at the end of which an account earns dividend credit. The Dividend Period begins on the first calendar day of the period and ends on the last calendar day of the period.

- Rate Information.** The Annual Percentage Yield is a percentage rate that reflects the total amount of dividends to be paid on account based on the dividend rate and frequency of compounding for an assumed period. For Share Savings, Club Money Market, Steps Money Market and Checking accounts, the Dividend Rate and Annual Percentage Yield may change at any time without notice. For Share Savings, Club Money Market and Checking accounts, the Dividend Rate and Annual Percentage Yields are determined by the Credit Union's Board of Directors. The Dividend Rates and Annual Percentage Yields are the prospective rates and will be applied to all credit union participants paying for the applicable dividend period. The Share Savings account is a Tiered Rate Account. If your account balance is \$1999.99 or below, the first Dividend Rate and Annual Percentage Yield listed for this account will apply. If your account balance is from \$2000.00 to \$9999.99, the second Dividend Rate and Annual Percentage Yield listed for this account will apply. If your account balance is \$10,000.00 or greater, the third Dividend Rate and Annual Percentage Yield listed for this account will apply. If you have a joint account, the first Dividend Rate and Annual Percentage Yield for that balance range will apply to the full balance of your account. The Share Savings accounts listed may receive more than one rate. If your account balance is \$29,999.99 or below, the first Dividend Rate and Annual Percentage Yield listed for this account in the Rate Schedule will apply. If your account balance is from \$30,000.00 to \$49,999.99, the second Dividend Rate and Annual Percentage Yield listed for this account will apply. If your balance is from \$50,000.00 to \$49,999.99, the fourth Dividend Rate and Annual Percentage Yield will apply. If your balance is \$50,000.00 or higher, the fifth Dividend Rate and Annual Percentage Yield listed for this account will apply. Once a particular balance range is met, the Dividend Rate and Annual Percentage Yield for that balance range will apply to the full balance of your account.
- Nature of Dividends.** Dividends are paid from current income and available earnings after required transfers to reserves at the end of the dividend period. calendar day of the period and ends on the last calendar day of the period.
4. **Accrual of Dividends.** For Share Savings, Club Money Market, Steps Money Market and Checking accounts, dividends will begin to accrue on non-out-deposits (e.g., checks) on the business day you make the deposit to your account.
5. **Minimum Requirements.** The minimum balance requirements applicable to each account are set forth in the Rate Schedule. For checking accounts, there is a minimum monthly balance to which interest is credited; for Share Savings, Club Money Market and Checking accounts, there is a minimum average daily balance service fee set forth on the reverse side. For Money Market, Steps Money Market and Checking accounts, there is a minimum average daily balance to earn the Annual Percentage Yield for the dividend period. If the minimum average daily balance is not met, you will not earn the stated Annual Percentage Yield. For Share Savings, Club Money Market, Steps Money Market, and Checking accounts, using an Average Daily Balance method, dividends are calculated by applying a periodic rate to the Average Daily Balance in the account for the period. The Average Daily Balance is determined by adding the full amount of principle in the account for each day of the period and dividing that figure by the number of days in the period.
6. **Account Limitations.** For Share Savings and Money Market accounts, no more than six (6) pre-authorized, automatic or telephone transfers may be made from these accounts to another account of yours or to a third party in any month, and no more than three (3) of the three six (6) transfers may be by check, draft or debit card to a third party. If you exceed these limitations, your account may be subject to a fee or be closed. The club account is paid out monthly; any other withdrawals will incur a fee. For Money Market accounts, a \$200.00 minimum fee withdrawal, and a maximum of three (3) withdrawals per month are allowed. For Steps Money Market accounts, one (1) withdrawal of \$140.00 minimum per month is allowed. If this limit is exceeded, the account will be closed. For Checking and Steps Checking accounts, no account limitations apply.

## CONTRACT

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF STEELE

THIRD JUDICIAL DISTRICT

Retailers National Bank /Target Visa

Judgment Creditor,  
againstTheodore J Mees  
621 Glendale St  
Owatonna, Minnesota 55060Judgment Debtor,  
and

Home Town Federal Credit Union

Third Party.

**NOTICE OF THIRD PARTY LEVY  
AND DISCLOSURE (OTHER THAN  
EARNINGS)**

Court File No. CX-04-985

PLEASE TAKE NOTICE that pursuant to Minnesota Statutes, Chapter 551, the undersigned, as attorney for the judgment creditor, hereby makes demand and levies execution upon all money due and owing by you (up to \$10,000) to the judgment debtor for the amount of the judgment specified below. A copy of the writ of execution issued by the court is enclosed. The unpaid judgment balance is \$8,570.41.

In responding to this Levy, you are to complete the attached disclosure form and mail it to the undersigned attorney for the judgment creditor, together with your check payable to the above- named judgment creditor, for the nonexempt amount owed by you to the judgment debtor or for which you are obligated to the judgment debtor, within the time limits set forth in chapter 551.

If you are a financial institution and the judgment debtor is a natural person, two exemption notices are also enclosed pursuant to Minnesota Statutes, section 551.02. Only natural persons are entitled to exemptions under this statute.

Dated: August 10, 2004

MESSERET &amp; KRAMER P.A.

Derrick N. Weber, #241623  
Jeffrey J. Cohen, #290762  
Jefferson C. Pappas, #304943  
Matthew R. Smith, #322908  
3033 Campus Drive  
Suite 250  
Plymouth, MN 55441  
Telephone: (763) 548-7900

04-23998-0

EXHIBIT H

STATE OF MINNESOTA  
County of Steele  
Third Judicial District

**ORIGINAL**

Page 1 of 2  
WRIT OF  
EXECUTION

(Personal or Real Property)

STAILERS NATIONAL BANK/TARGET VISA VS. THEODORE J. MEES

District Court Case Number 74-CX-04-000985  
Judgment Date 08/03/2004  
Date Docketed 08/03/2004 at 1:54 p.m.

Court of Original Entry  
DISTRICT  
Original Judgment Amount  
\$ 8,509.13

County Where Judgment Roll or Transcript Filed: STEELE

**JUDGMENT INFORMATION**

THE STATE OF MINNESOTA TO THE SHERIFF OF Steele

COUNTY:

WHEREAS, Judgment was entered in favor of  
STAILERS NATIONAL BANK/TARGET VISA

and against

THEODORE J. MEES

THEREFORE, you are hereby commanded to satisfy said judgment, with interest and your fees, out of the personal property of the judgment debtor within your county; and if sufficient personal property cannot be found, then out of the real property in your county belonging to said judgment debtor on the day when said judgment was docketed in your county, or at any time thereafter not exceeding ten years from the date of entry. The writ of execution expires in 30 days after its issuance by the Court Administrator.

**Amount to be Collected on Date Issued:**

CURRENT PRINCIPAL DUE	:	\$	8,509.13
CURRENT COSTS/DISBURSEMENTS	:	\$	40.00
INTEREST	:	\$	.93
EXECUTION FEE	:	\$	
Subtotal Due	:	\$	8,550.06

Date Execution Issued: 08/04/2004

Jordan Meiners  
Court Administrator:

*Linda M. Brandt*  
By Deputy

Notarized  
(Creditor or Atty):

STATE OF MINNESOTA  
County of Steele  
Third Judicial District

Page 2 of 2  
WRIT OF  
EXECUTION  
(Personal or Real Property)

TAILERS NATIONAL BANK/TARGET VISA VS. THEODORE J. MEES

District Court Case Number 74-CX-04-000985  
Judgment Date 08/03/2004  
Date Docketed 08/03/2004 at 1:54 p.m.

Court of Original Entry  
DISTRICT  
Original Judgment Amount  
\$ 8,509.13

RETURN ON EXECUTION

\_\_\_\_\_ X \$ .92 \$\_\_\_\_\_ (from 08/04/2004 at daily rate)  
# Days (Daily Interest Amount valid through December 31 of this year)

SERVICE FEE : \$\_\_\_\_\_

OTHER COSTS OF COLLECTION : \$\_\_\_\_\_

SUBTOTAL FROM PAGE 1 : \$ 8,550.06

TOTAL DUE : \$\_\_\_\_\_

Return of Service by (Check one): \_\_\_\_\_ Sheriff \_\_\_\_\_ Atty (M.S. 551.04)

Service Returned (Check one):

\_\_\_\_\_ Satisfied in Full

\_\_\_\_\_ Partially Satisfied

(Amount Collected)

\$\_\_\_\_\_ on \_\_\_\_\_

(Less Collection Cost)

\$\_\_\_\_\_ (Date)

(Amount Satisfied)

\$\_\_\_\_\_

\_\_\_\_\_ No Property Found: (I hereby certify and return that I have made diligent search and inquiry in my county and have been unable to find any personal property out of which to satisfy the judgment described in this execution.)

\_\_\_\_\_ Not Used

Signature of Sheriff or Attorney on Return: \_\_\_\_\_ County: \_\_\_\_\_

## CONTRACT

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF STEELE

THIRD JUDICIAL DISTRICT

Retailers National Bank /Target Visa

Judgment Creditor,

against

Theodore J Mees  
621 Glendale St  
Owatonna, Minnesota 55060

Judgment Debtor,

and

Home Town Federal Credit Union

Defendant.

## EXEMPTION NOTICE

Court File No. CX-04-985

TO: Theodore J Mees, Judgment Debtor

An execution has been served on Home Town Federal Credit Union (Bank or other financial institution where you have an account).

Your account balance is \$ \_\_\_\_\_  
The amount being held is \$ \_\_\_\_\_

However, all or a portion of the funds, in your account will normally be exempt from creditors' claims if they are in one of the following categories:

1. Relief based on need. This includes the Minnesota family investment program (MFIP), Emergency Assistance (EA), work first program, Medical Assistance (MA), General Assistance (GA), General Assistance Medical Care (GAMC), Emergency General Assistance (EGA), Minnesota Supplemental Aid (MSA), MSA Emergency Assistance (MSA-EA), Supplemental Security Income (SSI), and Energy Assistance;

2. Social Security benefits (Old Age, Survivors, or Disability Insurance);

3. Unemployment compensation, workers' compensation, or veterans' benefits;

4. An accident, disability, or retirement pension or annuity;

5. Life insurance proceeds;

6. The earnings of your minor child and any child support paid to you; or

7. Money from a claim for damage or destruction of exempt property (such as household goods, farm tools, business equipment, a mobile home, or a car).

**THE FOLLOWING FUNDS ARE ALSO EXEMPT:**

8. All earnings of a person in category (1);
9. All earnings of a person who has received relief based on need, or who has been an inmate of a correctional institution, within the last six months;
10. 75 percent of every judgment debtor's after tax earnings; or
11. All of a judgment debtor's after tax earnings below 40 times the federal minimum wage.

**TIME LIMIT ON EXEMPTIONS AFTER DEPOSIT IN BANK:**

Categories (10) and (11): 20 days.

Categories (8) and (9): 60 days.

All others: no time limit, as long as funds are traceable to the exempt source. (In tracing funds, the first-in, first-out method is used. This means money deposited first is spent first.) The money being sought by the judgment creditor is being held in your account to give you a chance to claim an exemption.

**TO CLAIM AN EXEMPTION:**

Fill out, sign, and mail or deliver one copy of the attached exemption claim form to the institution which sent you this notice and mail or deliver one copy to the judgment creditor's attorney. The address for the judgment creditor's attorney is set forth below. **Both copies must be mailed or delivered on the same day.**

**NOTE:** You may help resolve your claim faster if you send to the creditor's attorney written proof or documents that show why your money is exempt. If you have questions regarding the documents to send as proof of an exemption, call the creditor's attorney. If you do not send written proof and the creditor's attorney has questions about your exemption claim, the creditor's attorney may object to your claim which may result in a further delay in releasing your exempt funds.

If they do not get the exemption claim back from you within 14 days of the date they mailed or gave it to you, they will be free to turn the money over to the attorney for the judgment creditor. If you are going to claim an exemption, do so as soon as possible, because your money may be held until it is decided.

**IF YOU CLAIM AN EXEMPTION:**

1. Nonexempt money can be turned over to the judgment creditor or sheriff;
2. The financial institution will keep holding the money claimed to be exempt; and
3. Seven days after receiving your exemption claim, the financial institution will release the money to you unless before then it receives an objection to your exemption claim.



**IF THE JUDGMENT CREDITOR OBJECTS TO YOUR EXEMPTION CLAIM:**

The institution will hold the money until a court decides if your exemption claim is valid, **BUT ONLY IF** the institution gets a copy of your court motion papers asserting the exemption **WITHIN TEN DAYS** after the objection is personally served on you, or within 13 days from the date the objection is mailed to you. You may wish to consult an attorney at once if the judgment creditor objects to your exemption claim.

**MOTION TO DETERMINE EXEMPTION:**

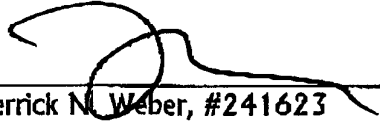
At any time after your funds have been held, you may ask for a court decision on the validity of your exemption claim by filing a request for hearing which may be obtained at the office of the clerk of the above court.

**PENALTIES:**

If you claim an exemption in bad faith, or if the judgment creditor wrongly objects to an exemption in bad faith, the court may order the person who acted in bad faith to pay costs, actual damages, attorneys fees, and an additional amount of up to \$100.

Dated: August 10, 2004

MESSERLI & KRAMER P.A.



---

Derrick N. Weber, #241623  
Jeffrey J. Cohen, #290762  
Jefferson C. Pappas, #304943  
Matthew R. Smith, #322908  
3033 Campus Drive  
Suite 250  
Plymouth, MN 55441  
Telephone: (763) 548-7900

04-23998-0

**EXEMPTION:**

(If you claim an exemption complete the following):

(a) Amount of exemption claim.

☐ I claim **ALL** the funds being held are exempt.☐ I claim **SOME** of the funds being held are exempt.

The exempt amount is \$ \_\_\_\_\_.

(b) Basis for exemption.

Of the 11 categories listed above, I am in category number \_\_\_\_\_. (If more than one category applies, you may fill in as many as apply.) The source of the exempt funds is the following:

\_\_\_\_\_

\_\_\_\_\_

If the source is a type of relief based on need, list the case number and county:

case number: \_\_\_\_\_

county: \_\_\_\_\_

I hereby authorize any agency that has distributed relief to me or any correctional institution in which I was an inmate to disclose to the above-named judgment creditor's attorney only whether or not I am or have been a recipient of relief based on need or an inmate of a correctional institution within the last six months.

I have mailed or delivered a copy of the exemption notice to the judgment creditor's attorney at the address indicated above.

Dated: \_\_\_\_\_

Debtor  
\_\_\_\_\_  
\_\_\_\_\_Debtor Address  
\_\_\_\_\_Debtor Telephone Number  
\_\_\_\_\_

BLL/04-23998-0

**Messerli  
&  
Kramer**

professional association

ATTORNEYS AT LAW

3033 CAMPUS DRIVE  
SUITE 250  
PLYMOUTH, MINNESOTA 55441

AUTHORIZED TO PRACTICE LAW IN  
MINNESOTA, WISCONSIN, IOWA,  
SOUTH DAKOTA, COLORADO,  
MONTANA, NEW YORK  
AND WASHINGTON, D.C.

WRITER'S DIRECT DIAL NUMBER

TELEPHONE (763) 548-7900

FACSIMILE (763) 548-7922

TOLL FREE 1-800-795-4205

**August 24, 2004**

**Home Town Federal Credit Union  
2400 W. Bridge Street  
Owatonna, MN 55060**

*This was the original  
levy company.*

**RE: Retailers National Bank vs. Theodore J Mees  
Social Security Number: 389-62-7629  
Our File No.: 04-23998-0**

**Dear Sir or Madam:**

**On August 10, 2004, I served upon you by certified mail a Third Party Levy relative to the above-captioned matter.**

**Please be advised that a bankruptcy petition was filed by the above-named individual(s) on August 20, 2004. I would request that you release any funds withheld on or after August 20, 2004 to the above-named individual(s).**

**Should you have any questions or comments, please advise.**

**Very truly yours,**

  
**Matthew R. Smith  
Derrick N. Weber**

**BBR/04-23998-0**

*EXHIBIT I*

**IMPORTANT NOTICE**

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR AND IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

04-03564-0

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Theodore J Maas  
and Brooks A Maas,

Debtors,

Case No. 04-34914

Chapter 7 Case

VERIFICATION FOR MOVANT'S REPLY

I, Yvonne Blum, the Designated Agent for Home Town Federal Credit Union FKA Owatonna Federal Credit Union, the Creditor herein, declare under penalty of perjury that the following is true and correct according to the best of my knowledge, information and belief, and based on the Creditor's business records:

1. I am legally competent to testify and am personally familiar with the debt owed by Debtors to the Creditor and the share accounts owned by Debtors.
2. I have reviewed Movant's Reply and the facts stated therein are true and correct. The Exhibits attached thereto are true and correct copies taken from the Creditor's files.
3. Creditor has administratively frozen \$2,050.82 of the pre-petition deposited funds pending its motion for stay relief to allow it to exercise its lien or set off rights.
4. Any deposited funds in excess of the debt owed to Creditor are presently available to Debtor as are any post-petition deposited funds.

Dated: 9/23/04



Yvonne Blum  
Home Town Federal Credit Union FKA Owatonna Federal Credit Union  
2400 W Bridge St  
Owatonna, MN 55060

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:  
Theodore J Mees and Brooke A Mees,  
Debtors,

Case No. 04-34914  
Chapter 7 Case

---

**UNSWORN CERTIFICATE OF SERVICE**

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I, Linda Jeanne Jungers, declare under penalty of perjury that on September 23, 2004, I mailed copies of the attached Movant's Reply to Debtors's Memorandum dated 9-22-04, with Exhibits E, F, G, H, and I, Verification, and Certificate of Service, by facsimile transmission as shown below and by first class mail postage prepaid to each entity named below at the address stated below for each entity.

Theodore J Mees and  
Brooke A Mees  
621 Glendale Street  
Owatonna, MN 55060

Dean Adams  
VIA FACSIMILE 507-433-8890

Dean Adams  
300 1st Street NW  
Austin, MN 55912

Michael S. Dietz  
Chapter 7 Trustee  
VIA FACSIMILE 507-288-9342

Michael S. Dietz  
Chapter 7 Trustee  
505 Marquette Bldg  
PO Box 549  
Rochester, MN 55903

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

Executed on: September 23, 2004

Signed: /e/Linda Jeanne Jungers  
Linda Jeanne Jungers  
STEWART, ZLIMEN & JUNGERS  
430 Oak Grove Street, #200  
Minneapolis, MN 55403